

Appl. No. : 10/821,806
Filed : April 9, 2004

REMARKS

Claims 1-26, 29 and 30, drawn to plant cultivation systems for growing terrestrial plants in saline water, are pending in the present application. The claims stand rejected under 35 U.S.C. §102 or 35 U.S.C. §103 for the reasons discussed below. Claim 1 is amended to recite that the plant support comprises a flexible buoyant portion. Support for this amendment can be found, for example, in Paragraphs [0058] and [0060] and in Example 1 of the specification. No new matter is added by this amendment.

Claim Rejections Under 35 U.S.C. §102

The Examiner maintained the rejection of claims 1-3, 6, 10-14, 24-26 and 30 under 35 U.S.C. §102(b) as being anticipated by Kitsu (U.S. Patent 4,382,348). The Examiner was not persuaded by Applicants' arguments that Kitsu does not disclose a plant cultivation system as claimed and further, that Kitsu does not teach or suggest use of the patented device in saline water.

Applicants maintain that such rejection is in error, as it is plain from the entire disclosure of Kitsu that saline water was never contemplated as a "nutrient solution." Indeed, the Examiner's sole point of any alleged nexus between the saline water that is a positive feature of the present claims, and the water of Kitsu, is the use of the word "pond" in both disclosures.

Kitsu's only mention of "pond" is at column 4, lines 25-27, and is in the following context: "That is, the device can also be used in a pond, river, *or other suitable nutrient solution source.*" Kitsu defines "nutrient solution" as: "any cultivating solution including plain water, water in which fertilizer or other nutrient material has been dissolved, or the like." There is no indication in Kitsu that salt would be considered a "nutrient."

In Applicants' disclosure, it is consistent and completely clear that the types of ponds referred to are saline ponds. In contrast, there is no indication that a saline pond would be acceptable as a "nutrient source" in Kitsu's system.

Accordingly, the rejection is based solely upon the fact that both disclosures use the word "pond," even though any person of ordinary skill would immediately recognize that the types of ponds referred to in the two different disclosures are not the same. It is truly unfortunate that

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such a transparently erroneous position on the part of the PTO should result in a final rejection and force Applicants to expend further time and resources to respond.

However, in the interest of advancing the claims to immediate allowance, Applicants have also amended claim 1 to recite that the plant cultivation system comprises a plant support comprising a flexible buoyant portion. Support for this amendment can be found, for example, in Paragraphs [0058] and [0060] and in Example 1 of the specification. Kitsu discloses a soilless plant growing device that can float. However, Kitsu does not teach or suggest a plant cultivation system comprising a plant support comprising a flexible buoyant portion as claimed. Instead, the drawings and disclosure of Kitsu demonstrate that the devices of Kitsu require frames made of rigid materials such "hard synthetic resin." *See, e.g.*, column 6, line 35. As Kitsu does not teach every feature of the claimed subject matter, Kitsu does not anticipate claim 1 nor its dependent claims, including claims 2-3, 6, 10-14, 24-26 and 30. In view of the amendment and foregoing argument, Applicants respectfully request withdrawal of the rejection.

Claim Rejections Under 35 U.S.C. §103

The Examiner maintained the rejection of claims 4, 5, 7-9, 15-19, 20-22, 23 and 29 under 35 U.S.C. §103(a) as being unpatentable over Kitsu alone or in view of Raskin (U.S. Patent 5,876,484), Shryock (U.S. Patent Application No. 10/223,803, published as U.S. 2003/0049392), or Koide (U.S. Patent 5,261,185) based on the arguments provided in the Office Action dated June 6, 2006.

Applicants have demonstrated that Kitsu does not disclose or even contemplate a system involving saline water. Furthermore, claim 1, as amended, and from which claims 4, 5, 7-9, 15-19, 20-22, 23 and 29 depend, recites a plant cultivation system comprising a plant support comprising a flexible buoyant portion. As discussed above, Kitsu does not teach or suggest all the features of the claimed subject matter, as amended. Furthermore, the cited documents of Raskin, Shryock and Koide do not remedy the deficiencies of Kitsu. Therefore, as Kitsu alone or in combination with Raskin, Shryock and Koide do not teach or suggest all the features of the claims as amended, Applicants respectfully submit that the claims as amended are in condition for allowance and request the withdrawal of this rejection.

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Conclusion

In view of the amendments and arguments presented above, Applicants submit that the present application is in condition for allowance and respectfully request the same. If any issues remain, the Examiner is cordially invited to contact Applicants' counsel at the number provided below in order to resolve such issues promptly.

Respectfully submitted,

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